

**JOHN'S PLACE OWNERS AND CITY OF BENICIA
ENFORCEMENT CASE ER1988.024
PROPOSED CCD2022.007.00**

PUBLIC HEARING, ITEM 9

ADRIENNE KLEIN

DECEMBER 1, 2022

OUTLINE

- Location and Summary of Violations
- Chronology of Events
- Defenses and Rebuttals
- Enforcement Committee Recommendation

VIOLATIONS

- Since 2011 - Unauthorized concrete block retaining wall (collapsed)
- Since 2011 - Failure to provide and maintain public access (Special Condition II.B of Permit 1977.021.07)
- Failure to complete three partial permit assignments following purchase of parcels subject to the permit (Special Condition II.G and Standard Condition IV.C of Permit 1977.021.07)

JOHN'S PLACE, BENICIA, SOLANO COUNTY



December 1, 2022

OVERVIEW OF LOT 1 VIEW CORRIDOR AND LOTS 4 AND 5 PUBLIC ACCESS AREA



BEACH VIEW OF UNAUTHORIZED CONCRETE BLOCK RETAINING WALL AND PUBLIC ACCESS STAIRWAY



VIEW OF COLLAPSED CONCRETE BLOCK RETAINING WALL AND LOTS 4 AND 5 PUBLIC ACCESS AREA WITH STAIRWAY (CIRCLED)



PUBLIC ACCESS ENTRANCE ON LOT 4 (MAGNELLI) AND LOT 5 (STATON)



PUBLIC ACCESS AREA ON LOTS 4 AND 5, OCTOBER 20, 2022



December 1, 2022



VIOLATIONS

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- Since 2011 - Failure to provide and maintain public access (Special Condition II.B of Permit 1977.021.07)
- Failure to complete three partial permit assignments following purchase of parcels subject to the permit (Special Condition II.G and Standard Condition IV.C of Permit 1977.021.07)

TIMELINE (1 OF 2)

- 1970's - Unauthorized concrete block retaining wall constructed on Lot 4
- 1978 - BCDC Permit 1977.021.00 authorized a subdivision and construction of 10 residences
 - Public access and views required on Lots 4 and 5 and public views required Lot 1
 - Open space required at base of bluff on Lots 1 through 10 and on 17 acres of tide and submerged lands
- 1978 - Recordation of subdivision map with BCDC-required public access
- 1983 - City accepted easement for Lots 4 and 5 public access and views
- 1991 – BCDC Permit M1991.055.00 authorized stairway construction in public access area on Lots 4 and 5 (required by a 1990 cease and desist order to resolve a violation on Lot 1)

TIMELINE (2 OF 2)

- February 2011 - Unauthorized concrete block retaining wall collapsed and City closed public access stairway
- May 2011 – BCDC Permit 1977.021.07 authorized new shoreline protection project on Lot 4 and all co-permittees executed it
- 2012-2019 Linda Magnelli failed to construct the BCDC authorized shoreline protection project (i.e., it was shovel ready)
- 2019-2022 – BCDC re-engaged with Linda Magnelli who requested permission for an amended project - instead of the 2011 approved project - but co-permittees did not agree to the amended project
- September 2022 – BCDC issued a Violation Report and Complaint to require implementation of the shoreline protection project authorized by Permit 1977.021.07

DEFENSES AND REBUTTALS (1 OF 2)

- Lot 4 owner Linda Magnelli must resolve unauthorized shoreline protection violation and is solely responsible for costs to remove concrete blocks and construct authorized shoreline protection
- The 1977 permit required a public access area on Lots 4 and 5 and the 1990 order and 1991 permit added a stairway requirement to this area
- Public access requirements run with the land for so long as the authorized improvements exist (residences are in place)
- The record contains no information suggesting that the public access and/or beach destination is unsafe
- Adjacent, offsite public access is independent of the access required by the 1977 permit

DEFENSES AND REBUTTALS (2 OF 2)

- The maximum penalty of \$30,000 to all co-permittees is appropriate for an eleven year long public access violation
- A modest penalty of \$370 per owner is appropriate for the failure to complete a partial permit assignment form

ENFORCEMENT COMMITTEE RECOMMENDATION

CEASE AND DESIST ORDER

- All Respondents to cease and desist from violating the MPA and Permit 1977.021.08
- Respondent Magnelli to remove all unauthorized concrete blocks from the shoreline and to construct new shoreline protection authorized by Permit 1977.021.07 and following approved plans by December 31, 2023
- Respondent City of Benicia to re-construct a public access stairway and open the public access on Lots 4 and 5 by December 31, 2024
- Respondents Vitolano, Middleton and Staton to each submit a partial permit assignment form within 30 days of order

ENFORCEMENT COMMITTEE RECOMMENDATION

CIVIL PENALTY ORDER

- Respondents to pay \$30,000 in civil penalties for the eleven-year-long public access violation
- Linda Magnelli to pay \$30,000 in civil penalties for the eleven-year-long, unauthorized concrete block retaining wall violation
- Respondents Vitolano, Middleton and Staton to each pay \$370 for their respective partial permit assignment violations

RECOMMENDED COMMISSION MOTION

- Adopt In Full the Enforcement Committee's Recommended Enforcement Decision and Proposed Cease and Desist and Civil Penalty Order CCD2022.007.00